

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ROBERT ANNABEL, II,

Plaintiff,

v.

Case No. 2:23-cv-12346

District Judge Robert J. White

Magistrate Judge Kimberly G. Altman

NORBERT FRONCZAK,

Defendant.

/

ORDER DENYING PLAINTIFF'S MOTION TO COMPEL (ECF No. 21)

I. Introduction

This is a prisoner civil rights case. Plaintiff Robert Annabel, II (Annabel), proceeding *pro se*, filed a complaint against Norbert Fronczak (Fronczak) alleging that Fronczak threatened to write Annabel a ticket and restrict his access to the law library if Annabel filed any additional grievances against Fronczak. *See* ECF No.

1. At the time of the incident, Annabel was incarcerated at the Macomb Correctional Facility, but he has since been moved to the Ionia Correctional Facility. Under 28 U.S.C. § 636(b)(1), all pretrial matters have been referred to the undersigned. (ECF No. 19).

Before the Court is Annabel's motion to compel discovery of documents and answers to interrogatories. (ECF No. 21). For the reasons discussed below, this motion will be DENIED without prejudice.

II. Background

Annabel filed the complaint on September 15, 2023. (ECF No. 1). Instead of filing an answer, Fronczak filed a motion for summary judgment on the basis of exhaustion on July 24, 2024. (ECF No. 16). Because Fronczak's dispositive motion was pending, the Court did not enter a scheduling order. Annabel then filed this motion to compel on September 17, 2024. (ECF No. 21).¹ In a Report and Recommendation (R&R) dated September 19, 2024, the undersigned has recommended that Fronczak's motion for summary judgment on the basis of exhaustion be denied.

III. Discussion

As indicated in his motion, Annabel sent the interrogatories and requests for documents on July 29, 2024. (ECF No. 21, PageID.212). This was shortly after Fronczak filed his motion for summary judgment, (ECF No. 16). As there was no scheduling order in place at the time of the requests, these discovery requests were

¹ On the same date, Annabel filed a "notice" stating that he filed a motion to consolidate this case with Case No. 2:23-cv-11123. (ECF No. 20). Fronczak is the sole defendant in both. As the motion to consolidate was filed in Case No. 2:23-cv-11123, this matter is not before the Court.

premature. *See Brown v. Snyder*, No. 19-11325, 2020 WL 6342669, at *2 (E.D. Mich. Oct. 29, 2020) (“In *pro se* prisoner civil litigation, such as this case, discovery typically commences upon issuance of a scheduling order setting discovery and dispositive motion deadlines.”).

If the R&R denying Fronczak’s motion for summary judgment is adopted by the district judge, the Court will enter a scheduling order allowing the parties to conduct merits discovery. At that time, Annabel can renew his discovery requests to Fronczak. Annabel is cautioned that under the Federal Rules, he is required to send discovery requests to the party in possession of the relevant information or documents; it is improper to file a discovery request with the Court. *See Townsend v. Rhodes*, No. 4:14-CV-10411, 2015 WL 1781230, at *2, n.2 (E.D. Mich. Apr. 20, 2015). If Annabel’s requests are denied or if Fronczak does not respond within the appropriate timeframe, Annabel may then renew his motion to compel discovery responses.

IV. Conclusion

For the reasons stated above, Annabel’s motion to compel, (ECF No. 21), is DENIED without prejudice.

SO ORDERED.

Dated: September 19, 2024
Detroit, Michigan

s/Kimberly G. Altman
KIMBERLY G. ALTMAN
United States Magistrate Judge

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was served upon counsel of record and any unrepresented parties via the Court's ECF System to their respective email or First Class U.S. mail addresses disclosed on the Notice of Electronic Filing on September 19, 2024.

s/Julie Owens
Case Manager